United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-1580

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P/S

To be argued by
KENNETH J. KAPLAN

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1580

UNITED STATES OF AMERICA,

Appellee,

—against—

SAMUEL KAPLAN,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLEE

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

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Assistant United States Attorneys,
Of Counsel.

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TABLE OF CASES

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BRIEF FOR THE APPELLEE

Preliminary Statement

Samuel Kaplan appeals from a judgment of conviction of the United States District Court for the Eastern District of New York (Weinstein, *J.*), entered April 26, 1974, which judgment convicted appellant, after a jury trial, of knowingly possessing, with the intent to distribute, approximately 25.6 grams of heroin (Count One), and knowingly distributing the heroin (Count Two), both in violation of 21 U.S.C., § 841(a)(1). On April 26, 1974, appellant was sentenced to a term of imprisonment of eight years on both counts, to run concurrently, pursuant to 18 U.S.C., § 4208(a)(2). Appellant is free on bail pending this appeal.

On this appeal, appellant does not challenge the sufficiency of the evidence but claims that: (1) the trial court's inadvertant failure to instruct the jury, at the close of the case, on the presumption of innocence was plain error; (2)

the trial court's admission of a "hearsay declaration" violated his constitutional right of confrontation; and (3) the trial court's charge on the element of knowledge was inappropriate to the evidence in the case.

Statement of Facts

A. The Government's Case

While operating as an undercover agent with the Bureau of Narcotics and Dangerous Drugs (now known as the Drug Enforcement Administration), Nicholas Alleva met with an individual known as Frank Lange * during November and December of 1971. During that period of time, Alleva met and discussed narcotics with Lange on about four separate occasions. On one occasion, he purchased an ounce of heroin from Lange (21-25, 63-65).**

On January 5, 1972, Alleva had a telephone conversation with Lange. During the course of the conversation Alleva complained of the poor quality of the narcotics that he had previously purchased from Lange and inquired about the quality of the next purchase. Lange represented that the quality "would be very good" (62-63). Lange further advised Alleva that the agent should "be at his residence at 2:00 P.M., and his connection would be there with him" (60-63).

At approximately 2:00 P.M. on January 6th, Alleva arrived at Lange's residence, 193 Homecrest Avenue in Brooklyn.*** Lange greeted Alleva on the stairway and directed the agent to come upstairs to his bedroom (25-26).

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* Lange was originally named as a co-defendant with appellant, but died prior to trial. Therefore, the first indictment (72 Cr. 31) was superseded by another indictment which names appellant alone and upon which appellant was convicted.

** Numbers in parenthesis refer to pages of trial transcript.

*** Lange lived with his parents and sister in a one family house. He occupied a second floor bedroom (25-26).

Alleva entered a room with a "few pieces of furniture", a mattress on the floor, posters and psychedelic lighting, and observed appellant who was wearing a white tee shirt and dungarees, half sitting and half lying on the mattress. Alleva was not introduced to appellant (27-28). Lange walked over to a night table and removed from the drawer a plastic bag containing what laboratory analysis later showed to be 25.6 grams of heroin (27-28).

While Lange still had the package, Alleva looked at both appellant and Lange and stated: "Either one of you or both of you are going to have to come down with me to get the money" (28). Without responding, Lange turned to appellant. Appellant, in turn, inquired of Alleva: "Why do we have to go down and get the money" (29). Alleva responded: "Because you guys beat me once, you're not going to do it again".* Once more Lange turned to appellant. Appellant then motioned to Lange and said: "All right, go down and get the money" (30). Lange then moved towards Alleva. Before Alleva exited the room with Lange, however, he asked appellant about the quality of the substance he had just purchased. Appellant stated: "It's five hit stuff. I hit the same stuff five times myself" (31).

Alleva and Lange exited the room and proceeded to the Government car where the money, $1,300, was located (34). After Alleva field-tested the narcotics, he placed the package on the center console of the car and went outside to open the trunk. At that point, Alleva's fellow agents effected the arrest of Lange (35).

Some five minutes after the arrest of Lange, appellant was observed exiting the Lange residence and proceeding

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* According to Agent Alleva the term "beat" within the context of this conversation connotes one of two meanings: (1) a package of narcotics is of poor quality, or (2) the seller takes the money and steals the narcotics he has just delivered to the buyer (29-30).

across the street to his vehicle (102). Appellant appeared to be watching the activity of the agents some three or four houses removed from the Lange residence. Thereafter, when appellant started to walk away, he was arrested (104).

B. The Defense

Mrs. Patricia Ruggiero, Frank Lange's sister, testified that she knew appellant for some six years. She stated that her brother and appellant worked together as carpet installers, but that her brother was unemployed during January, 1972. According to the witness, appellant often visited the family's house and was considered a close family friend (113-115). Mrs. Ruggiero described her brother as a man in his early twenties with long hair and appellant as a man in his early forties (129-130). The witness stated that on the day in question appellant came to the Lange residence and offered to aid Frank in obtaining employment. Appellant and her brother thereafter retired to the latter's bedroom for the purpose of placing a telephone call to a prospective employer (119-120).

Sometime later, according to the witness, a man and woman, described as friends of Frank Lange, entered the house and were guided to the witness' bedroom. Lange entered into conversation with this unidentified couple (120-121). A short time thereafter, Alleva entered the house and later left with her brother. She testified that appellant then told her that he was leaving. The witness related that the young couple departed through the back exit sometime thereafter (123).

Mrs. Ruggiero indicated that she knew her brother was a narcotics user (140). She did not know the nature of employment engaged in by appellant during this time (133).

Appellant, testifying in his own behalf, denied possessing or selling narcotics. He stated that he enjoyed a social

relationship with the Lange family, having met them through Frank whom he employed as a helper in the installation of carpeting (144, 145).

Appellant stated that the purpose of his visit to the Lange home was to aid Lange in obtaining employment (147). He testified that he observed a young couple enter the house and have a conversation with Lange. He also stated that he made a telephone call to a prospective employer in Lange's bedroom (147-148).

Appellant stated that he observed Alleva enter the room with Lange and observed Lange taking an envelope out of the drawer. He testified that he "could tell by the way they were talking that this is the wrong place to be" (149). Appellant then told Alleva and Lange to go outside by telling them: "This is wrong. You guys are going to get everybody in trouble. Do this outside" (149).

Appellant further testified that he was employed from 1970 to 1972 as vice-president of certain record companies (155-156). However, he never tried to obtain employment for Lange with these companies (166). He also testified that he failed to file a personal income tax return for 1972 (161-163).

ARGUMENT

POINT I

The Trial Court's omission of a reference to "presumption of innocence", in the charge to the jury, did not constitute reversible error.

The District Court, after submitting proposed jury instructions to counsel prior to the charge to the jury, inadvertently omitted the sentence, "On the contrary, he

is presumed to be innocent" from its actual charge to the jury. Subsequent to the Court's charge to the jury, defense counsel stated that he had no exceptions to the charge (224). Appellant now contends that this omission, by the District Court, in the absence of either a request or exception at the time of trial constitutes reversible error.

It is a well-established rule of law in this Circuit that the trial court's failure to instruct the jury on the presumption of innocence is not reversible error. *United States* v. *McGuire*, 64 F.2d 485 (2d Cir.), *cert. denied*, 290 U.S. 645 (1933); *United States* v. *Nimerick*, 118 F.2d 464 (2d Cir.), *cert. denied*, 313 U.S. 592 (1941); *United States* v. *Newman*, 143 F.2d 389 (1944); *United States* v. *Capitol Meats*, 166 F.2d 537, 539 (2d Cir.), *cert. denied*, 334 U.S. 812 (1948); *United States* v. *Private Brands, Inc.*, 250 F.2d 554 (2d Cir. 1957), *cert. denied*, 355 U.S. 957 (1958).

As the Court observed in *United States* v. *Newman*, *supra*, 143 F.2d at 390:

> ". . . if there still remains some mystic difference between the presumption of innocence and the burden of proof, it is at least impalpable enough to require an accused to bring the omission to the judge's attention."

Thus, it is not necessary for the Court to charge "presumption of innocence" *in haec verba*, especially in the absence of objection, where the charge properly advises the jury on the burden of proof and reasonable doubt. Judge Weinstein, in the instant case, sufficiently apprised the jury of the defendant's presumed innocence throughout his charge.* If the charge, read as a whole, fairly advises

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* The District Court stated (214-215):

> The Government has the burden of proving guilt beyond a reasonable double with respect to each element

[Footnote continued on following page]

the jury as to the Government's burden of proof, as did the charge in the instant case,

> ". . . the presumption of innocence can not be said to have such specificity of function that its bare and unnoticed omission makes out a deprivation of due process . . ." *United States ex rel. Campagne* v. *Follette*, 306 F. Supp. 1255, 1258 (E.D.N.Y.), *aff'd*, 419 F.2d 833 (2d Cir. 1969), *cert. denied*, 400 U.S. 834 (1970).

In recognition of the foregoing authorities, appellant seeks to distinguish his case.* He argues that because the omitted language was contained in Judge Weinstein's

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of the two offenses the defendant is charged with committing. The defendant doesn't have to prove his innocence. He doesn't have to introduce any evidence. He doesn't have to take the witness stand. The proof beyond a reasonable doubt lies with the Government right through the trial.

This portion of the charge was directly followed by the traditional definition of reasonable doubt.

It is noteworthy that the Court, on other occasions, advised the jury concerning the presumption of innocence; i.e., during the voir dire (Appellant's Appendix, A-128) and during the course of the trial. Thus, during the direct examination of Agent Alleva, the following occurred:

> Q. Tell the jury what you mean by an undercover capacity. A. By acting undercover, you assume some other identity and try to either purchase narcotic drugs as evidence or gather intelligence by associating with certain alleged criminals. This is done—
>
> Mr. LaRossa: I object and move this be stricken.
>
> The Court: Strike it. This defendant is presumed to be innocent (27-28).

* The only case which appellant has unearthed in which the court reversed a conviction on the failure to charge the presumption of innocence and in which no exception was taken, *McDonald* v. *United States*, 284 F.2d 232 (D.C. Cir. 1960), also involved the trial court's failure to charge as to the burden of proof and its failure to define an essential element of the crime for which the defendant was convicted.

typewritten instructions, no request to charge was necessary. The short answer to that argument—which is a non sequitur—is that appellant's necessary reliance on "plain error" standard stems from his counsel's failure to afford the District Court the opportunity to correct the charge, a failure which in the case at bar was due to the absence of an exception to the charge. See, *United States* v. *Private Brands, supra,* at 557-558.

Appellant also argues that the District Court's several references during the trial to the fact that appellant was presumed innocent served to highlight to the jury the absence of such an instruction at the close of the case. Appellant speculates that the jury was invited, therefore, to consider that "the Government and the Appellant stood on equal footing" (Appellant's Brief, p. 13).* It is submitted that no jury listening to the entirety of Judge Weinstein's charge would have reached that conclusion even if it had noticed the difference and even if it were able to divide the "mystic difference" between the presumption of innocence and the burden of proof. In all events, Judge Weinstein's apparent failure to charge as to the presumption of innocence was hardly so noticeable as to prompt appellant's experienced trial counsel to raise the objection. One can hardly imagine that the jury noticed the omission or, if it did, that it mattered in the

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* It appears that one ingredient of this contention is appellant's argument that instructions on the presumption of innocence were crucial because the case turned on the jury's evaluation of the credibility of the witnesses. The Government however, is unaware of any case which has held that a defendant who becomes a witness is presumed to be telling the truth. Moreover, appellant's suggestion that the presumption of innocence was "evidence in his favor" (Appellant's Brief, p. 14) was squarely rejected by this Court in the *Nimerick* case (118 F.2d at 467-468). Finally, in *United States* v. *Capitol Meats, supra,* the failure to charge as to the presumption of innocence was considered in the context of the credibility of the defendants and was not found to be reversible error.

deliberations. Cf., *United States* v. *Rosa*, 493 F.2d 1191, 1195 (2d Cir. 1974).

POINT II

Lange's declarations to Agent Alleva on January 5 were properly received as utterances showing Alleva's state of mind and could have been received, as well, as hearsay declarations.

Appellant contends that his Sixth Amendment right to confrontation was violated when Agent Alleva was permitted to testify to the Jauary 5th telephone conversation with Lange.* Appellant argues that the admission of Lange's assertion to Alleva that his "connection" would be present the following day constitutes reversible error.

(1)

The trial court admitted the conversation as a non-hearsay verbal act, bearing on the state of mind of the

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* Q. "Now, Alleva, did you have a conversation with Frank Lange on the day previous, January 5, 1972? A. Yes, sir, I did.

Q. And where did this conversation take place? A. It took place over the telephone.

Q. Did you call him or did he call you? A. I called him.

Q. And can you tell us what you said to him and what he said to you?

* * * * *

Q. Tell us what you said to him. A. I asked him about the quality of the next purchase, and he said the quality would be very good. I asked him when and where, how we could, you know, perform the next purchase. He told me that I should be at his residence at 2:00 P.M., the following day, which would be January 6th, at 2:00 P.M., and his connection would be there with him.

Q. Where was that? A. I am sorry?

Q. Where was that he and his connection were supposed to be? A. At his residence which was 1939 Homecrest Avenue in Brooklyn" (63-65).

hearer, Alleva. With respect to that conversation the Court provided the following limiting instructions upon defense counsel's objection (61-62):

> I am going to sustain that objection to a limited extent. Now ladies and gentlemen of the jury, as I understand the witness is going to tell you something that Mr. Lange told him over the phone that preceding day.
>
> Mr. Lange is not available to be cross-examined so that this defendant does not have his constitutional right to confront this person and to cross-examine him before you so you could watch him.
>
> I am allowing this testimony, therefore, only so that, assuming you find it to be true, and that is entirely up to you, you will better understand what was in this witness' mind when he went to the home of Mr. Lange; is that clear, and what, if you believe him to be telling the truth, he expected to find there, so that you can evaluate the activities of this defendant—of this witness and the others in the room. But you are not to assume and you may not use this evidence to find that there has been any prior conversations between Mr. Lange and the defendant. Is that clear? There is no evidence at all of that from anything that this witness now describes to you.
>
> We don't know what was in Mr. Lange's mind and he is not here to tell us. It is only being introduced so that you understand what was in this witness' mind when he went into that room.
>
> Any other further limitation?
>
> Mr. La Rossa: Nothing further. Your Honor.
>
> The Court: Thank you.

Shortly thereafter, with regard to the same conversation, the Court stated (64):

> Again, ladies and gentlemen, there is no evidence

whatsoever that this defendant had anything to do with any prior transaction that this witness may have had with Mr. Lange.

I am allowing this evidence in only so that you can understand better what was in the witness' mind and perhaps in Mr. Lange's mind so you can better understand what was happening the next day if you credit his testimony.

But there is no evidence whatsoever that this defendant had anything to do with any prior transaction of Mr. Lange prior to the day in which he was actually in the room with Mr. Lange.

Do you wish any further instructions?

Mr. La Rossa: No, sir.

It is well settled that statements offered to show the state of mind or explain the conduct of either a declarant or a hearer of a statement are not hearsay and are therefore admissible. *Mutual Life Insurance Co.* v. *Hillmon*, 145 U.S. 285, 295 (1892); *United States* v. *Scandafia*, 390 F.2d 244, 250-251 (n. 8) (2d Cir.), vacated on other grounds, 394 U.S. 310 (1968); *United States* v. *D'Amato*, 493 F.2d 359 (2d Cir., 1974); 6 Wigmore on Evidence, 1766 (1940). While statements may be inadmissible to prove the truth of what they assert, they may be admitted if the fact of the assertion is itself relevant. *United States* v. *Press*, 336 F.2d 1003, 1011 (2d Cir. 1964), *cert. denied*, 379 U.S. 965 (1965); *Anderson* v. *United States*, — U.S. —, 48 L.W. 4815, 4818, June 3, 1974.

In the instant case the proffered evidence was not introduced before the jury to show that appellant was the "connection" described by Lange to Alleva on the January 5th telephone conversation, but to explain to the jury the behavior of Alleva at the January 6th meeting at Lange's apartment. Alleva's statements, addressed to appellant without a prior introduction by Lange, that appellant or Lange accompany him downstairs and that "you guys

beat me once" make little sense without the benefit of explaining that Alleva's state of mind had previously been formed by Lange's statement the previous day. Moreover, had Lange's statement on January 5th been excluded, Agent Alleva's statements to appellant the next day might reasonably have been viewed by the jury as statements designed to entrap appellant. Thus, the importance of admitting in evidence Lange's statement was two-fold: (1) to properly orient the jury as to the events and conversations in Lange's bedroom; and (2) to avoid injecting a false element in the case. Finally, as Judge Weinstein observed:

> "I think they have to have that in order to understand what this agent was doing here and how he reacted because otherwise, as I say, the defendant could argue and should argue that it would just be bizarre for a man to come into a home that way and act in this somewhat arrogant manner that the agent described. But in the context of a prior discussion with Lange his actions do make sense. So they can't even evaluate the credibility of this witness without having that evidence" (57).

Judge Weinstein's precise limiting instructions advised the jury that they were to accept this evidence as bearing upon Alleva's state of mind and not for the truth of the assertion. To borrow from this Court's recent statement in *United States* v. *Bell*, — F.2d — (2d Cir. Slip Opinions, 4855, 4859, decided July 17, 1974): whatever unreality attended Judge Weinstein's instructions was "inherent in the jury process which depends on the assumption that the jurors will follow the instructions given by the judge." Moreover, Judge Weinstein's clear instructions to the jury were crucially buttressed in the charge which, by focusing the jury's attention on the element of appellant's knowledge on January 6th (221-222), further dissuaded the jury from considering Lange's

statement on the previous day for its truth. Thus, in characterizing the Government's theory, Judge Weinstein never alluded to Lange's statements but stated simply, "the Government contends that his actions showed that he did have such knowledge" (221).

(2)

It is respectfully submitted that the District Court could have properly admitted Lange's statements not merely to explain Alleva's actions, but as a hearsay statement of a co-conspirator uttered in furtherance of a conspiracy. See, *Lutwak* v. *United States,* 334 U.S. 604 (1953); *United States* v. *Rosenstein,* 474 F.2d 705 (2d Cir. 1973); *Anderson* v. *United States, supra.*

Surely the District Court in the instant case could have found that the meeting on January 6th established appellant's participation with Lange in an illegal venture; and that appellant's representations of the heroin's quality as well as his response to Alleva's statement ("you guys beat me once") created the inference that appellant knew about those transactions prior to January 6th and that he had had dealings with Lange prior to Alleva's January 5th telephone call.

From the circumstances surrounding the January 6th meeting, the District Court could properly have inferred that the meeting was fully anticipated by appellant and that it was necessary for Lange to represent that appellant would be present at the January 6th meeting. That representation was necessary because, appellant, (the "connection") wanted to make certain that a potentially good customer (Alleva) was satisfied with the product. See *United States* v. *D'Amato, supra.* Thus, the Court could find sufficient proof, independent of Lange's statement, that appellant was connected with the venture. See, *United States* v. *Costello,* 352 F.2d 848, 855 (2d Cir. 1965), *rev'd on other grounds sub nom., Marchetti* v. *United States,* 390 U.S. 39 (1968); *United States* v. *Geaney,* 417 F.2d 1116

(2d Cir. 1969), *cert. denied*, 397 U.S. 1028 (1970); *Parente* v. *United States*, 249 F.2d 752 (9th Cir. 1957); *United States* v. *Manfredi*, 488 F.2d 588, 596 (2d Cir. 1973).*

Judge Weinstein, although he admitted Lange's declaration for a limited purpose, agreed that he would be

> ". . . warranted, based on my following the testimony of the agent, and based upon how he described Mr. Kaplan's reaction, in believing independent of the hearsay that there was a prior existing conspiracy and that it is hardly [sic] likely that it existed at least one day in advance of the event.
>
> So I think in this case I would be entitled to allow it in as a heasay exception under the conspiracy rule or under the Hillman Doctrine.
>
> But I think in order to protect the defendant fully I will give a limiting instruction not permitting them to use it for hearsay purposes" (54-55).

Thus, it is apparent that the Court scrupulously guarded appellant's constitutional rights by limiting the effect of the Government's proof and advising the jury that they were not to accept Lange's statements for the truth of the assertions therein. It is respectfully submitted that appellant's claim of deprivation of Sixth Amendment rights is patently frivolous.

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* The Government would note that the *Costello* case involved a situation in which the declarant-underling had, nearly two weeks prior to the time the agent (Ripa) first met with the defendant Frank Costello, characterized Costello as his "boss." In sanctioning the hearsay use of that characterization, Judge Friendly, following an exhaustive treatment of the co-conspirator's exception, stated (352 F.2d at 848):

> Costello argues there was no sufficient independent evidence to connect him with the conspiracy, stressing that Ripa did not meet him until September 14. However, Ripa's testimony as to what Costello said and did on that occasion and later, amply justified a finding that Costello was one of the "bosses" and had been so from the outset.

POINT III

The Trial Court properly instructed the jury on the element of knowledge.

Appellant contends that the District Court's instruction on knowledge constituted reversible error. The court charged the jury as follows:

> "A critical issue in this case is knowledge. Did the defendant know that Lange had this narcotic when he went into the room? Did he know it was going to be distributed to this agent? The fact is that knowledge may be shown by direct or circumstantial evidence, just as any other fact in the case, and we have to determine that by what people do or say, because we can't look into their brains.
>
> This defendant has testified that he had no such knowledge. The Government contends that his actions showed that he did have such knowledge.
>
> One may not willfully and intentionally remain ignorant of a fact important and material to his conduct in order to escape the consequences of the criminal law. So if you find that the defendant acted knowingly, you may base that finding on the fact that he either actually knew it was heroin or that he deliberately closed his eyes to what he had every reason to believe was the fact. That's only with respect to knowledge. You still have to find all the the other elements I have explained to you. Mere neglect or even foolishness is not sufficient to find a defendant guilty" (221-222).

Appellant now argues that this "conscious avoidance" charge was inappropriate in view of his defense, although no exception was taken to the charge after it was given nor at the time that Judge Weinstein provided copies of the charge to counsel (Appellant's Appendix, pp. 110-111).

As appellant correctly observes, this charge has often received judicial sanction in this Circuit. *United States* v. *Oliveras-Vega,* — F.2d — (2d Cir., Slip opinion, 2657, April 3, 1974); *United States* v. *Joly,* 493 F.2d 672 (2d Cir. 1974);* *United States* v. *Sarantos,* 455 F.2d 877, 880-881 (2d Cir. 1972); *United States* v. *Abrams,* 427 F.2d 86, 91 (2d Cir.), *cert. denied,* 400 U.S. 832 (1970). However, appellant argues that the charge might have led the jury to believe that his explanation was legally insufficient.**

Clearly, a reading of the whole charge conclusively establishes that if the jury believed appellant's explanation they should acquit. The Court fully apprised the jury that they could not convict unless the defendant "knowingly and intentionally" possessed and distributed the heroin (216);*** and unless he actually or constructively possessed the heroin (217). The Court also provided a detailed aiding and abetting charge (218) in which it instructed the jury to ask themselves

> ". . . such questions as, Did he associate himself with the venture? Did he participate in it as something he wished to bring about? Did he seek by his actions to make it succeed? If he did, then he is an aider and abettor" (219).

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* Judge Weinstein's charge in *United States* v. *Joly, supra,* 493 F.2d at 674, was almost identical to that in the instant case.

** Appellant testified that he told Lange and Alleva, after he observed the transaction:

> This is wrong. You guys are going to get everybody in trouble. Do this outside. You got your sister and mother home—and they left" (149).

*** The court stated:

> A person does not knowingly do an act if his action resulted from a mistake, neglect, or any other innocent reason. An act is intentional if the defendant acts voluntarily and with the specific intent to do something the law forbids . . . (216).

In addition, the Court clearly advised the jury that

> ". . . mere presence at the scene, even coupled wtih knowledge that a crime is taking place, is insufficient to sustain a conviction for aiding and abetting" (219).

The jury could, therefore, have had no misconception that if they believed appellant's testimony that he was an innocent bystander they must acquit.

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

Dated: July 26, 1974

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

PAUL B. BERGMAN,
KENNETH J. KAPLAN,
Assistant United States Attorneys,
Of Counsel.

Form No. USA-52a-6a
(Rev. 1-29-71)

Kaplan

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

DEBORAH J. AMUNDSEN, being duly sworn, says that on the 29th day of July 1974, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, ~~a~~ x two copies of the brief for the appellee of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

~~JAMES LAROSSA~~

James LaRossa, Esq.
~~LaRossa, Shargel & Fischetti, Esqs.~~
522 Fifth Avenue
~~New York, New York 10036~~

Sworn to before me this
29th day of July 1974

Irene B. Cohn

IRENE B. COHN
Notary Public, State of New York
No. 24-0600155
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1976

Deborah J. Amundsen

DEBORAH J. AMUNDSEN

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the ____ day of _____, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,
_____, 19____

_____
United States Attorney,
Attorney for _____

To:
_____
_____
_____
Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____ duly entered herein on the ____ day of _____, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,
Dated: Brooklyn, New York,
_____, 19____

_____
United States Attorney,
Attorney for _____

To:
_____
_____
_____
Attorney for _____

_____ Action No. _____

UNITED STATES DISTRICT COURT
Eastern District of New York

—Against—

_____
United States Attorney,
Attorney for _____
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within _____ is hereby admitted.
Dated: _____, 19____

_____
Attorney for _____

FPI-LC-5M-8-73-7385